IN THE HIGH COURT OF JUDICATURE: ANDHRA PRADESH

AT HYDERABAD

(SPECIAL ORGIINAL JURISDICTION)

TUESDAY THE FOURTEENTH DAY OF SEMPTEMBER

TWO THOUSAND AND FOUR

PRESENT

THE HONOURABLE MR. DEVINDER GUPTA THE CHIEF JUSTICE

AND

THE HONOURABLE MR. JUSTICE C.V. RAMULU

WRIT PETITION NO.13202 OF 2002

BETWEEN:

Nallmalai Foundation, a registered Society
with Registration No.402/95, having its Office
at 1, Old Block, Samrat Complex, Saifabad,
Hyderabad, represented by its Director
Mr. Pranay Waghray. ….. Petitioner

AND

1. The State of Andhra Pradesh, represented
by its Principal Secretary to Government,
Energy, Forests, Environment Science and
Technology Department, Secretariat
Buildings, Hyderabad.

2. The Principal Chief Conservator of Forests,

Government of Andhra Pradesh,

“Aranya Bhavan”, Hyderabad.

3. The Deputy Chief Warden (Wild Life)

Office of the Chief Conservator of Forests,

Hyderabad.

4. Union of India, Ministry of Environment &

Forests, Government of India, Paryavaran

Bhavan, CGO Complex, New Delhi-110003.

5. Nature Park Walkers Association (Regd. No.

4928/93), Plot No.1288, Road No.65,

Jubilee Hills, Hyderabad, represented by its

Secretary Sri S. Govindaiah Goud.

(R.5 is impleaded as per Court order in WPMP

No.19981 of 2002 dated 5.5.2002) …. Respondents.

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court will be pleased to issue an appropriate Writ, Order or Direction, more particularly, one in the nature of a Writ of Mandamus to implement the provisions of Section 28 of Wild Life (Protection) Act, 1972 in the matter of entry into Kasu Berahmananda Reddy National Park, Jubilee Hills, Hyderabad and to cancel the permits/passes issued contrary to the provisions of the said Act forthwith.

Counsel for the petitioner: Sri A. Ramalingeswara Rao.

Counsel for respondents 1 to 3. Sri A. Satya prasad, Special Govt.

Pleader, for Advocate General

Counsel for respondent No.4 Sri A. Rajasekhar Reddy

Standing Counsel for Central Govt.

Counsel for respondent No.5 Mr V.Rajagopal Reddy

The Court made the following JUDGMENT:

(Per the HON'BLE THE CHIEF JUSTICE SHRI DEVINDER GUPTA)

Nallamalai Foundation, a Society registered under the Societies Registration Act, whose main objectives are to protect natural habitats, promote nature conservation, disseminate information through appropriate media to promote sustainable practices in management and use of natural resources in accordance with scientific principles etc., has filed this Writ Petition through its Director, Sri Pranay Waghray, as PIL.

In the Writ Petition, direction has been sought against respondents 1 to 4 to implement the provisions of Section 28 of Wild Life (Protection) Act, 1972 (hereinafter referred to as 'the Act') in the matter of entry into Kasu Brahmandanda Reddy National Park, Jubilee Hills (hereinafter referred to as 'the park') and to cancel the permits/passes issued contrary to the provisions of the Act.

It is alleged that an extent of about 95 acres of land was handed over to Forest Department under G.O.Ms.No.300 dated 7.4.1990, recognising that the said land was full of vegetative growth. Subsequently, land belonging to the erstwhile Nizam

of Hyderabad was taken over under the provisions of Urban Land (C & R) Act, 1976 and handed over to the Forest Department by the District Collector, Hyderabad, pursuant to an order issued by the Government in G.O.Ms.No.957 Revenue (UC-I) Department dated 25.10.1991, for developing it as a National Park. On 3rd February, 1994, a notification was issued under Section 24 of the A.P. Forests Act, 1967, declaring the land to an extent of 142.5 hectares as protected forest, which was notified in A.P. Gazette on 15.2.1994 and in Hyderabad District Gazette on 10.5.1994. In view of the ecological significance of the area, and, in order to preserve the land, besides providing lung space in the congested locality of the twin cities, the Forest Department submitted a proposal to the Government to declare the said protected forest as a National Park. The Government accordingly approved the proposal and issued orders in G.O.Ms.No.52 dated 19.3.1994, which was published in A.P. Gazette on the same day, and in Hyderabad District Gazette on 18.4.1994. After following the procedure as contemplated in the Act, final notification was published on 3.12.1998.

It is further alleged that some residents of Banjara Hills and Jubilee Hills styling themselves as members of Nature Park Walkers Association (hereinafter referred as the 'walkers association'), registered as a society under Societies Registration Act, filed W.P.No.775 of 1994, and sought direction to the authorities to allow the members of the society entry into the National Park. They also filed W.P.No.8609 of 1994 challenging G.O. Ms.No.52 dated 19.3.1994. W.P.No.11740 of 1997 was also filed challenging the action of the Forest Department in imposing restrictions on the members of the walkers association and general public from using the park. It is averred that the writ petitions were heard together and disposed of on 23.9.1997. By that time, the Government had not issued final notification. The rights claimed by the petitioner's association were directed to be considered in accordance with the provisions of the Act. It is further alleged that the District Collector, Hyderabad, the competent authority under the Act, took up enquiry, considered rival claims, and on 28.11.1998, issued proceedings rejecting the right of the walkers association to walk in the park. Their objections as to declaration of the park as Sanctuary under section 35 of the Act were also rejected, whereafter final notification was issued in G.O.Ms.No.187 dated 3.12.1998.

It is further alleged that the walkers association then filed two writ petitions (W.P.No.35072 of 1998 and W.P.No.34387 of 1998) challenging the orders of the

District Collector dated 20.11.1998. Both the writ petitions were heard together and were disposed of on 22.3.1999 with direction to the respondents-authorities to finalise the guidelines before 31.3.1999 and to issue permits subject to the conditions that may be prescribed under Section 28(2) of the Act. The members of the association were held eligible for grant of permits subject to the conditions that may be imposed by the authorities. It was directed that till the guidelines and conditions for entry into the National Park are finalised, the existing practice of permitting the public to enter the park shall continue. Aggrieved by the said order, the petitioner-association as well as the State Government filed appeals - W.A.Nos.674 of 1999 and 774 of 1999 respectively. When the appeals came up for final hearing, learned counsel for walkers association withdrew the writ petitions; consequently, the writ appeals were allowed on 18.2.2002.

In the aforementioned back ground, it is the petitioner's case that since the Government was allowing public to enter into the park as a matter of routine under permits contrary to the provisions of the Act, a notice was issued by the petitioner-society on 15.3.2002 to the Government bringing to its notice the provisions of Section 28 of the Act and the Rules framed thereunder, and requesting the authorities to adhere to the provisions of the Act and the Rules. Again on 30.3.2002, a representation was submitted to the 2nd respondent to cancel the permits issued and to allow only visitors as per the provisions of the Act. Petitioner-society allege that it was given to understand that permits are to expire by the end of June 2002 and thereafter the permits will not be renewed. Realising that the Government might not renew permits beyond 30.6.2002, walkers association filed W.P.No.10940 of 2002 for implementation of G.O.Ms.No.53, which had fixed the rates of entry fee. Petitioner-society again submitted a representation on 28.6.2002 not to renew the permits. Despite that, permits were renewed and public are being allowed to enter into the park as a matter of routine, thus, flouting the provisions of section 28 of the Act. Petitioner-society thus questions the act of respondents-authorities in issuing permits as a matter of routine to the members of walkers association.

It is the case of the petitioner-society that the restrictions on entry in Sanctuary as provided in Section 27 of the Act are made applicable to a National Park as well in view of sub-section (8) of Section 35 of the Act. Section 28 of the Act provides for grant of permits to enter or reside in a Sanctuary for the purposes mentioned in clauses (a) to (e) of sub-section (1) of Section 28 and subject to certain other

conditions. Thus, according to the petitioner-society, walking in a national park wherein there are no public pathways is not permitted either under section 28 or section 27. Permit, which is envisaged under section 28, is issued for the purposes and to the persons mentioned in clauses (a) to (e) of Section 28(1) only. Such permit is not contemplated as daily, annual or monthly basis for visitors. Permits are issued only for specific purposes on specific occasions in favour of specific individuals as contemplated by the provisions. It is alleged that an extent of 2578 acres is available for the members of walkers association to walk either on the roads or in the parks or open places as provided in the lay out of posh colonies which sprang in Shaikpet and Hakimpet villages. Hyderabad Urban Development Authority (HUDA) has developed a pathway around the park outside the area for the walkers to have uninterrupted walking area. But, allowing such persons to walk within the park in question is in violation of the provisions of the Act. In this background, the petitioner filed the writ petition seeking the prayer afore-stated.

State Government has opposed the writ petition on the affidavit of Sri A. Sankaran, Divisional Forest Officer, and Wildlife Management Division. The affidavit refers to the manner in which area was declared as a National Park pursuant to notification dated 19.3.1994 published in Hyderabad District Gazette on 18.4.1994 and of challenge made by the walkers association to the notification. It is stated that pursuant to the directions of the High Court, orders were passed under section 28 of the Act, vide circular dated 22.2.1995 issuing passes valid upto 31.12.1996 on payment of prescribed fee. Subsequently, vide Memo dated 25.3.1997, daily permit system for entry into the park was introduced which also restricted the visitors only to visitors zone, which is approximately 1/3rd of the area of the national park. Again, the walkers association in W.P.No.11740 of 1997 challenged this circular. The writ petition was disposed of on 23.9.1997 holding that there was no reason to strike down the notification except that the Government shall consider all the objections to the notification as well as consult the Wildlife Advisory Board before making final notification, and till notification is made, entry into park shall be regulated by permits. It is further stated that a proclamation was issued specifying the areas proposed to be notified and inviting objections from the public. Walkers association filed its objections, which were rejected by the District Collector, Hyderabad, which led to filing of writ petitions. On 22.3.1999, the writ petitions were disposed of holding that

any provision prohibiting the general public from entering the green park will be in violation of Article 21 of the Constitution of India and that entry of pubic into green park does not in any way destroy the wildlife or environment that is in existence in the park, provided the entry is permitted subject to restrictions. It is further stated that the High Court directed guidelines to be finalised before 31.3.1999 and to issue permits subject to the conditions that may be prescribed. Against the said order, the State and the walkers association filed writ appeals, which were disposed by a common order on 18.2.2002 setting aside the order-dated 22.3.1999.

After narrating the above history, it is stated in the counter of the Government that by G.O.Ms.No.53 dated 23.6.2001, Government issued notification enhancing the entry fee into national park. Government has not permitted entry into national park as a matter of routine and permits are not being issued contrary to the provisions of the Act and entry is being regulated strictly in accordance with the provisions of the Act. A visitor is permitted only into the visitors zone of the national park. Entry is not permitted in the core area or the Conservation Zone and other areas, which may be closed from time to time by the officer in charge of the park for taking up maintenance, development etc. Out of the notified national park area of 142.5 hectares, visitors zone is only 53.5 hectares, which works out to 38% of the notified area. The rest of 62% of the area, admeasuring 89 hectares is demarcated as Conservation or Core area. Respondents state that sufficient steps are taken to ensure that this regulation is strictly complied with. Visitors are permitted in to the national Park only between 7.00 a.m. to 6.00 p.m. The period from sunset to sunrise is kept totally free of human interference. Most of the species of wild animals in the park are nocturnal like snakes, jungle cats etc., and they have unhindered access to the entire park, for feed and water during the night. There are no lights inside the park and the total area of the national park remains in darkness throughout the night to suit wild life animal habitat. Even in the visitor zone, the visitors cannot move about in the entire area. A network of well-defined pathways exists and the visitors are allowed to move only on the designated pathways. Sufficient watch and ward and security are provided in the visitors zone to ensure that the visitors do not deviate from the paths laid out. The guidelines and a number of precautionary measures required to be observed, are displayed at the entrance for compliance by the visitors, like not damaging flora and fauna, not causing fire in the park, not to organise any meetings and campaigns, not to use music system or public address system, not to interfere with movement of wild animals etc. It is mandatory for the

visitors to abide by the provisions of the Act and for any contravention of the provision; they are liable for penal action under Section 51 of the Act.

Respondents further submitted that 1720 annual permits and 311 monthly permits had been issued and that the money realised therefrom is being utilised for maintenance and development of the park. With a view to ensure that the number of visitors entering the park do not go beyond the safe carrying capacity of the area, number of annual permits to be issued to the visitors has been limited to 3000 and monthly permits to 350. It is also stated by respondents that no entry permits are issued under the category walking. There are no separate entry permits differentiating a walker from a visitor. All entry permits are being issued under the category of visitors, whether or not one is a member of the nature park walkers association. In fact the park management do not recognise the natural park walkers association as a separate entity. Entry permits are issued under one general category of “visitors” only. The entry permits are issued to individuals for the purpose of tourism and not to any association. Tourism is also a form of recreation and if a person with a valid entry permit enters the park, to enjoy the natural forest with its flora and fauna and to enrich his or her mind and body, such a person cannot be denied entry on the ground that he is walking in the park. All along the network pathways in the park, a large number of interpretative signs have been put up to educate visitors about the values of nature conservation and the need to protect and conserve all plants and animals. The national park also has a well-developed Environment Education Centre with a nature interpretation centre consisting of models, charts and drawings about the rich diversity, of plants and animals, inside the National Park. This education centre also has a well-equipped library with books on nature, wildlife, science etc., and an auditorium wherein wildlife films are screened. Large number of Nature Camps are being conducted for the benefit of student community, with the involvement of NGOs, voluntary organisations etc. in the park to impart awareness of nature conservation among the participants. All these activities come under the category of Eco-Tourism, which is now being encouraged all over the country in various Wildlife Sanctuaries and National Parks. During such visits, the visitors not only enrich themselves with knowledge about the values of the park but also propagate the need to conserve all natural forest with its varied plants and animals among the general public.

In nutshell, the respondents stated that entry into park is being regulated strictly in

accordance with Section 28 of the Act. Since establishment of the National Park in 1994, there has not been a single case of violation of the provisions of the Act or the A.P. Forest Act, inside the National Park. Rather the Soil and Moisture Conservation measures taken up under watershed treatment, clubbed with strict protection measures in the National Park, there has been significant improvement in the density of flora and fauna. The comparison between satellite imaginaries of 1998 and 2000 show overall improvement in forest density. There is therefore no ground for barring visitors from entering the National Park. Nearly 2000 annual and monthly permits have been issued for visitors in the National Park till date.

Petitioner-society filed reply to the aforementioned counter-affidavit controverting the stand taken by the respondents, more particularly, saying that the bio-diversity of the area cannot be conserved by issuing wholesale permits in large quantity for jolly walkers and it cannot be termed as an activity of eco-tourism. The continued walking activity of so many persons is disruptive of life cycles of wildlife. It will have adverse biotic influence, which interferes with and prevents feeding, nesting and breeding which are critical life cycles. The National Park is not similar in size compared to other National Parks in other parts of the country, where tourism activity was permitted and revenue collection would remain subordinate to the interest of the conservation of habitat. The present permit holders are not accompanied by any guides. They never under go any education at the so called Environment Education Centre and it is surprising that the Government has come up with a defence of Eco-Tourism to support the group of people who want to use the National Park as ground for their jolly walking. Restrictions of entry in the declared National Parks is in the interest of conservation of those areas and of bio-diversity and the Respondents should not be permitted to breach the legislative mandate contained in the Wild Life (Protection) Act, 1972.

The Walkers Association, which is impleaded as Respondent No.5, has also filed separate counter-affidavit. But, we need not go into the stand taken by the walkers association or the stand taken in the reply-affidavit by the petitioner-society. We will confine our order to the extent to which the petitioner-society has challenged the action of the respondents as regards the violation of the provisions of the Act and the rules made thereunder.

Section 27 of the Act deals with restrictions on entry in sanctuary, and section 28 deals with grant of permits to enter or reside in a sanctuary, which are applicable to

national parks as well as per sub-section (8) of Section 35 of the Act The said provisions read as follows:

27. **Restriction on entry in sanctuary**:- (1) No person other than, --

a. a public servant on duty,

b. a person who has been permitted by the Chief Wild Life Warden or the authorized officer to reside within the limits of the sanctuary,

c. a person who has any right over immovable property within the limits of the sanctuary,

d. a person passing through the sanctuary along a public highway; and

e. the dependants of the person referred to in clause (a),Clause (b) or Clause (c),

shall enter or reside in the sanctuary, except under, and in accordance with, the conditions of a permit granted under Section 28.

(2) Every person shall so long as he resides in the sanctuary, be bound--

a. to prevent the commission, in the sanctuary, of an offence against this Act;

b. where there is reason to believe that any such offence against this Act has been committed in such sanctuary, to help in discovering and arresting the offender;

c. to report the death of any wild animal and to safeguard its remains until the Child Wild Life Warden or the authorised Officer takes charge thereof;

d. to extinguish any fire in such sanctuary of which he has knowledge or information to prevent from spreading, by any lawful means in his power, any fire within the vicinity of such sanctuary of which has knowledge or information; and

e. to assist any Forest Officer, Chief Wild Life Warden, Wild Life Warden or Police officer demanding his aid for preventing the commission of any offence against this Actor in the investigation of any such offence.

(3) No person shall, with intent to cause damages to any boundary mark of a sanctuary or to cause any wrongful gain as defined in the Indian Penal Code, after destroy, move, or deface such boundary mark.

(4) No person shall tease or molest any wild animal or litter the grounds of sanctuary

28**. Grant of permit**: (1) The Chief Wild Life Warden may, on applicationgrant to any person, a permit to enter or reside in a sanctuary for all or any of the following purposes, namely:--

a. investigation or study of wild life and purposes ancillary or incidental thereto;

b. photograph;

c. scientific research;

d. **tourism;**

e. transaction of lawful business with any person residing in the sanctuary.

(2) A permit to enter or reside in a sanctuary shall be issued subject to such conditions and on payment of such fee as may be prescribed.

It is not disputed that a valid notification has been issued under the provisions of the Act earmarking Visitors Zone and Conservation Zone. Visitors Zone is only of 53.5 hectares, which is about 38% of the entire notified area, and the rest of area, which is about 62% accounting for 89 hectares, is demarcated as Conservation or Core area. Even within the Visitors Zone there are pathways and the stand of the respondents is that even in the Visitors Zone, visitors cannot move about freely. A network of well defined path ways exist and that the visitors are allowed to move only on the designated pathways. Sufficient watch and ward and security are provided. Number of precautionary measures are required to be observed and since the establishment of park there has not been a single case of violation of the provisions of the Act inside the park.

Sub-section (1) of Section 27 says that no person other than the persons mentioned in Clauses (a) to (e) shall enter or reside in the sanctuary, except under, and in accordance with the conditions of a permit granted under Section 28. In other words, if a person has to enter into a Sanctuary/Park or any part thereof, he has to obtain a permit which is to be granted under Section 28 and the same will be subject to the conditions that may be imposed in the permit. The purposes for which permits can be granted are mentioned in Section 28, namely, for investigation or study of wild life and purposes ancillary or incidental thereto. In addition thereto, photographs, scientific research, tourism, transaction of lawful business with any person residing in the sanctuary are also purposes mentioned therein. Clause (a) of Section 28(1) enlarges the scope by including investigation or study of wild life and purposes ancillary or incidental thereto. **Clause (d) ie tourism is also a purpose for which permit can be granted.** The case of the respondents is that though the Act does not recognize walking or walkers association, permits are issued to visitors. Issue of permits in favour of visitors is not prohibited by the Act. Sub-section (2) of Section 28 says that a permit to enter or reside in a sanctuary shall be issued subject to such conditions and on payment of such fee as may be prescribed.

When permits are being issued on annual basis or monthly basis or daily basis to persons as visitors and that such entry is also restricted to only visitors zone subject to the conditions that they shall use only pathways and not extend their entry to the entire area of the visitors zone, hardly there is any force in the objection raised by the petitioner-society that permits are issued in contravention of Section 28 of the Act

or as a matter of routine. There is no prohibition under the Act that a person cannot seek entry into the park daily. Purpose for which permits are issued under section 28 cannot be restricted that a person who would like to pay visit to the park for study of wild life or purposes ancillary or incidental thereto or as members of tourism, cannot walk in the visitors zone on the specified pathways. Moreover, strict vigilance is being maintained by respondents to ensure that there is no violation of the conditions of the permit or of the provisions of the Act or the Rules. Neither the provisions of the Act nor the Rules in any way prohibit or restrict the right of respondents in giving permits on monthly or annual basis. For example, a person applying for permit to carry out investigation or study of wild life on annual basis cannot be denied such a permit; of course, such permit has to be issued subject to conditions that may lawfully be imposed. Such a purpose would be a purpose within the ambit of Section 28. Similarly, a photographer can also apply for a permit on annual basis. The period of permit is governed by rule 28 of the Rules that it can be granted only for the period specified therein and permit cannot be granted as a matter of right. General conditions governing issuance of permits are contained in rule 30. Rule 31 empowers the authority ie Chief Wild Life Warden or the Officer in charge of a Sanctuary or a National Park to cancel permit in case the permit holder commits breach of any of the conditions specified in the permit.

Thus, the action of the respondents in issuing permits to visitors, confining their entry only to Visitors Zone and that too subject to conditions as may lawfully be imposed by the respondents-authorities, cannot be faulted with. We, therefore, find no force in the Writ Petition, which is accordingly dismissed. No costs.

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DEVINDER GUPTA, CJ

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C.V. RAMULU, J

September, 2004.

Vtv

1. The Principal Secretary to Government,

State of Andhra Pradesh,

Energy, Forests, Environment Science and

Technology Department, Secretariat

Buildings, Hyderabad.

2. The Principal Chief Conservator of Forests,

Government of Andhra Pradesh,

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5. Two CD copies.